

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-11651 FDS

CHRISTOPHER TORRES,)
)
Plaintiff,)
)
v.)
)
CITY OF FITCHBURG,)
MICHAEL J. SEVIGNY, and)
SCOTT GABRIEL)
)
Defendants.)

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

FIRST DEFENSE

The Defendants hereby state that the Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

The Defendants hereby answer the Plaintiff's Complaint, paragraph by paragraph, as follows:

I. INTRODUCTION

The Defendants state that this paragraph is of an introductory nature and states conclusions of law to which no response is necessary.

II. JURISDICTION

The Defendants state that this paragraph is of an introductory nature and states conclusions of law to which no response is necessary.

III. PARTIES

1. The Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.
2. The Defendants admit that the City of Fitchburg is listed as a defendant.

3. The Defendants admit that Michael Seigny is an individual employed as a police officer with the City of Fitchburg. Further, the defendants state that the remaining sentence of this paragraph states a conclusion of law to which no response is required.
4. The Defendants admit that Scott Gabriel is an individual employed as a police officer with the City of Fitchburg. Further, the defendants state that the remaining sentence of this paragraph states a conclusion of law to which no response is required.

IV. STATEMENT OF FACTS

5. The Defendants deny the allegations contained in this paragraph.
6. The Defendants admit that Defendants Seigny and Gabriel were working as police officers on August 20, 2006.
7. The Defendants admit the allegations contained in this paragraph.
8. The Defendants admit the allegations that they were dispatched to investigate, but deny the remaining allegations contained in this paragraph.
9. The Defendants deny the allegations contained in this paragraph.
10. The Defendants admit the allegations contained in this paragraph.
11. The Defendants deny the allegations contained in this paragraph.
12. The Defendants deny the allegations contained in this paragraph.
13. The Defendants deny the allegations contained in this paragraph.
14. The Defendants admit that the plaintiff was placed under arrest, but deny the remaining allegations of this paragraph.
15. The Defendants deny the allegations contained in this paragraph.
16. The Defendants deny the allegations contained in this paragraph.
17. The Defendants are without sufficient knowledge or information to form a belief as to the allegations contained in this paragraph.
18. The Defendants deny the allegations contained in this paragraph.
19. The Defendants deny the allegations contained in this paragraph.

COUNT I

20. Defendants hereby repeat their responses to the preceding paragraphs 1-19 of the Plaintiff's Complaint.
21. The Defendants state that this paragraph states a conclusion of law to which no response is required.
22. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT II

23. The Defendants hereby repeat their responses to the preceding paragraphs 1-22 of the Plaintiff's Complaint.
24. The Defendants state that this paragraph states a conclusion of law to which no response is required.
25. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT III

26. The Defendants hereby repeat their responses to the preceding paragraphs 1-25 of the Plaintiff's Complaint.
27. The Defendants state that this paragraph states a conclusion of law to which no response is required.
28. The Defendants state that this paragraph states a conclusion of law to which no response is required.
29. The Defendants state that this paragraph states a conclusion of law to which no response is required.
30. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT IV

31. The Defendants hereby repeat their responses to the preceding paragraphs 1-30 of the Plaintiff's Complaint.
32. The Defendants state that this paragraph states a conclusion of law to which no response is required.
33. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT V

- 34. The Defendants hereby repeat their responses to the preceding paragraphs 1-33 of the Plaintiff's Complaint.
- 35. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 36. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT VI

- 37. The Defendants hereby repeat their responses to the preceding paragraphs 1-36 of the Plaintiff's Complaint.
- 38. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 39. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 40. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 41. The Defendants state that this paragraph states a conclusion of law to which no response is required.

COUNT VII

- 42. The Defendants hereby repeat their responses to the preceding paragraphs 1-41 of the Plaintiff's Complaint.
- 43. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 44. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 45. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 46. The Defendants state that this paragraph states a conclusion of law to which no response is required.
- 47. The Defendants state that this paragraph states a conclusion of law to which no response is required.

48. The Defendants state that this paragraph states a conclusion of law to which no response is required.
49. The Defendants state that this paragraph states a conclusion of law to which no response is required.
50. The Defendants state that this paragraph states a conclusion of law to which no response is required.
51. The Defendants state that this paragraph states a conclusion of law to which no response is required.

DEMAND FOR JUDGMENT

WHEREFORE, the Defendants deny that the Plaintiff is entitled to judgment in any amount against the Defendants and, furthermore, the Defendants ask this Honorable Court to enter judgment for the Defendants and against the Plaintiff along with interest, costs, and attorneys' fees.

THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the Defendants state that the Defendants' actions are entitled to qualified good-faith immunity.

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the Defendants state the Defendants were privileged in the Defendants' conduct and acts and, therefore, the Plaintiff cannot recover.

FIFTH AFFIRMATIVE DEFENSE

The Defendants state that they were justified in their acts or conduct and that therefore the Plaintiff cannot recover.

SIXTH AFFIRMATIVE DEFENSE

The Defendants state that their acts and conduct were performed according to, and protected by, law and/or legal process, and that therefore, the Plaintiff cannot recover.

SEVENTH AFFIRMATIVE DEFENSE

The Defendants state that their actions are immune from suit as they were engaging in discretionary functions.

EIGHTH AFFIRMATIVE DEFENSE

The Defendants state that the action was barred by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

The Defendants state that the Plaintiff cannot recover because of the provision of Mass. General Laws Ch. 258.

TENTH AFFIRMATIVE DEFENSE

The Defendants state that the Plaintiff, at the time of the alleged incident, was guilty of a violation of law(s), which contributed to the alleged incident.

ELEVENTH AFFIRMATIVE DEFENSE

The Defendants state that the Plaintiff has failed to fulfill the statutory prerequisites for filing a claim pursuant to Mass. General Laws Ch. 258 and Mass. General Laws Ch. 258 § 4.

JURY DEMAND

THE DEFENDANTS CLAIM A TRIAL BY JURY AS TO ALL ISSUES PROPERLY TRIABLE TO A JURY.

Respectfully submitted,
The Defendants, City of Fitchburg,
Michael J. Sevigny, and Scott Gabriel,
By their attorneys,

/s/ Jeremy Silverfine
Jeremy Silverfine, BBO #542779
Leonard H. Kesten, BBO #542042
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Dated: 10-21-09

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electric Filing (NEF) and paper copies will be sent this day to those participants indicated as non-registered participants.

/s/ Jeremy Silverfine

Jeremy I. Silverfine, BBO #542779

Dated: 10-21-09